

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

KYLE MERRICK,

Case No. 14-cv-1271

Plaintiff,

vs.

AMERICOLLECT, INC,

Defendant.

COMPLAINT

NOW COMES, Plaintiff Kyle Merrick, by and through his attorneys, DeLadurantey Law Office, LLC, and complains of Defendant Americollect, Inc. (hereinafter “Defendant Americollect”) and alleges to the best of his knowledge, information and belief formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

Nature of the Action

1. This lawsuit arises from the collection attempts of the Defendant.
2. Causes of Action herein are brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Wisconsin Consumer Act (“WCA”), Wis. Stat. § 421 *et seq.*

Jurisdiction and Venue

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331, because the case arises under the laws of the United States. This Court also has jurisdiction pursuant to 15 U.S.C. §

1692k(d), as it is an action to enforce liability created by the FDCPA within one year from the date on which the violation occurred.

2. This Court has supplemental jurisdiction over the claims arising under the Wisconsin Consumer Act under 28 U.S.C. §1367, because the Wisconsin Consumer Act claims are related to the FDCPA claims as they arise under the same set of facts, becoming part of the same case or controversy under Article III of the United States Constitution.

3. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391(b)(2), because this is where the acts giving rise to the claim occurred.

4. Under 28 U.S.C. § 1391(c), a defendant corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction. Defendant is a Wisconsin corporation and is subject to personal jurisdiction in Wisconsin.

Parties

5. Plaintiff Kyle Merrick (hereinafter “Mr. Merrick”) is a natural person who resides in the City of Appleton, County of Outagamie, State of Wisconsin.

6. Defendant Americollect is domestic business with a principal office of 1851 S. Alverno Rd., Manitowoc, WI 54221, and a registered agent of Kenlyn T. Gretz, 1851 S. Alverno Rd, Manitowoc, WI 54221.

Factual Allegations

7. In August 2014, Mr. Merrick paid a \$10 medical account that had been placed with Defendant Americollect.

8. When Mr. Merrick called to pay the account, he found that Defendant Americollect also had two other accounts for past bills, one for a medical bill and another for a dental bill.

9. One of the accounts was an Aurora Health Care account that had been placed with Defendant Americollect on May 7, 2014.

10. Defendant Americollect never sent a validation notice before attempting to collect on this debt from Aurora Health Care.

11. Mr. Merrick asked for information on the bill from Aurora Health Care.

12. Defendant Americollect then immediately reported the debt to Mr. Merrick's credit file.

13. When Mr. Merrick asked if Defendant Americollect would delete the tradeline if he paid it, he was informed that that was illegal.

Count 1 – Violations of the Fair Debt Collection Practices Act (15 U.S.C. §1692)

14. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

15. Defendant Americollect is a debt collector as defined by 15 U.S.C. §1692a(6).

16. Mr. Merrick is a "consumer" as defined by 15 U.S.C. §1692a(3).

17. The foregoing acts of Defendant Americollect constitute numerous and multiple violations of the FDCPA including, but not limited to, 15 U.S.C. §§ 1692d, 1692e, 1692e(2), 1692e(5), 1692(8), 1692e(10), 1692f, 1692f(1), and 1692g with respect to the Plaintiff.

18. Under 15 U.S.C. § 1692f, a debt collector cannot use "unfair or unconscionable means to collect or attempt to collect any debt."

19. Defendant Americollect used unfair and unconscionable tactics when its representative falsely stated that it was illegal for the company to delete a tradeline in exchange for payment, making Mr. Merrick think that the account was required to remain on his credit report.

20. Under 15 U.S.C. § 1692g, a debt collector must send a thirty day debt validation notice within five days of the initial communication.

21. Defendant Americollect never sent a validation notice to Mr. Merrick regarding the Aurora Health Care bill.

22. As a result of the Defendant's illegal conduct, Mr. Merrick has suffered emotional distress and mental anguish.

23. Plaintiff is entitled to actual damages pursuant to 15 U.S.C. §1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. §1692k(a)(3).

Count 2 – Violations of the Wisconsin Consumer Act (Wis. Stat. § 427.104(c))

24. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

25. The amount that the Defendant was attempting to collect constitutes a "claim" as that term is defined at Wis. Stat. § 427.103(1).

26. Defendant's conduct violated 427.104(h) in that the Defendant's conduct could reasonably be expected to harass Mr. Merrick by incorrectly interpreting credit reporting law and by not providing required notice.

27. As a result of the Defendant's illegal conduct, Mr. Merrick has suffered emotional distress and mental anguish.

28. Defendant Americollect is liable to Mr. Merrick for actual damages, statutory damages, punitive damages (if the evidence at trial so warrants), actual costs, and attorneys' fees, under Wis. Stat. § 427.105.

Trial by Jury

29. Plaintiff is entitled to, and hereby respectfully demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Mr. Merrick prays that judgment be entered against Defendant Americollect for:

- A. Actual damages in an amount to be determined at trial pursuant to 15 U.S.C. § 1692k(a)(1);
- B. Statutory damages of \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- C. Costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3);
- D. Actual and statutory damages pursuant to Wis. Stat. §427 *et al.*;
- E. Costs and reasonable attorneys' fees pursuant to Wis. Stat. §425.308; and
- F. Other and further relief as may be just and proper.

Dated this 14th day of October, 2014.

DeLadurantey Law Office, LLC

s/ Nathan E. DeLadurantey

Nathan E. DeLadurantey (WI# 1063937)

Heidi N. Miller (WI# 1087696)

DeLadurantey Law Office, LLC

735 W. Wisconsin Ave, Suite 720

Milwaukee, WI 53233

(414) 377-0515; (414) 755-0860 – Fax

Nathan@de-la-law.com

Heidi@de-la-law.com

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

Plaintiff Kyle Merrick, having first been duly sworn and upon oath, deposes and says as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified, or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Kyle Merrick

Subscribed and sworn to before me
this 14th day of Oct, 2014.

Shirley N. White
Notary Public
My commission expires: is permanent

